



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking into the Review
of the California High Cost Fund B Program.

R.06-06-028
(Filed June 29, 2006)

**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES
TO THE APPLICATION OF THE UTILITY REFORM NETWORK
FOR REHEARING OF D.07-09-020**

NATALIE D. WALES
Staff Counsel

Attorney for the Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Phone: (415) 355-5490
Fax: (415) 703-2262
ndw@cpuc.ca.gov

October 24, 2007

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I. INTRODUCTION

Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure, the Division of Ratepayer Advocates (DRA) submits this Response to the Application of The Utility Reform Network (TURN) for Rehearing of D.07-09-020 filed on October 9, 2007 (TURN Rehearing Application).¹

In its Rehearing Application, TURN raises concerns about the Commission's adoption of an "affordability standard" in D.07-09-020 that effectively sets the maximum basic residential rate caps for incumbent local exchange carriers (ILECs) at \$36.00.² DRA also notes that, in order for the Carriers of Last Resort (COLRs) to continue receiving B funds, D.07-09-020 requires COLRs to certify on annual basis that their rates for basic service rates are \$36.00 or less.³ DRA's Response addresses only TURN's recommendation that the Commission formally consider in Phase 2 of this proceeding the customer bill amounts that should be

¹ D.07-09-020 is the Commission's "Interim Opinion Adopting Reforms to the High Cost Fund-B Mechanism" adopted on September 6, 2007.

² TURN states that "...the Commission goes too far when it transforms the cost benchmark used to size the Fund into an 'affordability standard' for purposes of setting rate caps on basic service in high cost areas." TURN Rehearing Application at 2 (citing D.07-09-020 at Ordering Paragraph (OP) 7).

³ D.07-09-020 at 133 (OP 9) and 134-135 (OP 13(b) and (c)).

considered “affordable” for the purposes of adopting the upper dollar limits of the phased-in increases in basic residential rate caps for ILECs and COLRs.⁴

II. DISCUSSION

DRA shares the concern raised by TURN that, in deciding to gradually raise the basic rate caps for ILECs and COLRs, D.07-09-020 also adopts a maximum rate cap of \$36.00 that is based on an inadequate record regarding what dollar amounts constitute affordable basic service.⁵ In adopting \$36.00 as the benchmark for identifying the geographic areas that should be treated as “high cost,” the Commission clearly states its intent in D.07-09-020:

Our goal in setting the benchmark at \$36 is to delineate “high-cost” lines that are eligible for B-Fund support to a COLR within a reasonable range. For lines with a stated cost below the benchmark, the COLR will not receive B-Fund support. For this purpose, the \$36 per-line figure serves as a reasonable proxy for delineating basic access lines for which high-cost B-Fund support will be provided. The \$36 benchmark, however, is in no way intended to serve as a cap on basic rate levels, or as a determination that retail rates for basic service alone as high as \$36 would be affordable. Likewise, this benchmark level does not indicate that we believe it is appropriate for basic service to rise to a level of \$36 per line.⁶

While the Commission clearly states in the text of D.07-09-020 that the \$36 level is solely a high cost benchmark for the purposes of the Commission’s CHCF-B methodology,⁷ the subsequent Ordering Paragraphs (OPs) then use this level as a *de facto* “affordability standard” by (1) establishing \$36.00 as the maximum uniform basic rate cap to which ILECs’ current basic rates should be gradually increased (in increments and over a period of time to be

⁴ Silence on any issue is not intended to connote agreement or disagreement.

⁵ DRA raised this concern in its Comments on the Proposed Decision, stating that the Commission should clarify that the \$36.00 figure may be reasonable as a benchmark for determining whether a particular geographic area qualifies for receiving a CHCF-B subsidy, but not that the amount is necessarily an affordable rate. Comments of the Division of Ratepayer Advocates on the Proposed Decision of Commissioner Chong (CHCF-B Phase 1) (August 23, 2007) at 6-7 (DRA Comments on PD). DRA then recommended: “...the Commission should address conversion of the benchmark into a rate cap in the next phase of the proceeding, and should postpone a final determination of the amount of an acceptable rate cap until it obtains [other] data....” DRA Comments on PD at 7.

⁶ D.07-09-020 at 47-48 (emphasis added).

⁷ D.07-09-020 at 47-48.

determined in Phase 2 of the proceeding),⁸ and; (2) requiring COLRs to certify on an annual basis that their basic service rates in a supported area do not exceed \$36.00.⁹

DRA supports the distinction in D.07-09-020 between the high-cost benchmark level – \$36.00 – and an affordability level at which basic service rates are deemed reasonable.¹⁰ DRA therefore urges the Commission to clarify D.07-09-020 to reflect this distinction, and to ensure that the relevant Ordering Paragraphs are consistent with the text of the decision. As with the Commission’s determination to further examine in Phase 2 the timing and increments for phasing in increases to both ILEC and COLR basic rate caps, the Commission should explicitly consider in Phase 2 the specific dollar level that should be the upper limit on the caps. DRA has proposed specific modifications to the relevant Ordering Paragraphs of D.07-09-020 in the Appendix to this Response.

III. CONCLUSION

For the reasons discussed above, DRA urges the Commission to modify D.07-09-020 as provided in the Appendix to this Response.

Respectfully submitted,

/s/ NATALIE D. WALES

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Staff Counsel

Attorney for the Division of Ratepayer Advocates

California Public Utilities Commission

505 Van Ness Ave.

San Francisco, CA 94102

Phone: (415) 355-5490

Fax: (415) 703-2262

ndw@cpuc.ca.gov

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⁸ OP 7. D.07-09-020 at 133.

⁹ OPs 9, 13(b), and 13(c). D.07-09-020 at 133-135.

¹⁰ DRA stated in its Comments on the Proposed Decision that the Commission should clarify that the \$36.00 figure may be reasonable as a benchmark for determining whether a particular geographic area qualifies for receiving a CHCF-B subsidy, but not that the amount is necessarily an affordable rate. DRA Comments on PD at 2-7.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**RESPONSE OF THE DIVISION OF RATEPAYER ADVOCATES TO THE APPLICATION OF THE UTILITY REFORM NETWORK FOR REHEARING OF D.07-09-020**” in **R.06-06-028** by using the following service:

[**X**] **E-Mail Service:** sending the entire document as an attachment to an e-mail message to all known parties of record to this proceeding who provided electronic mail addresses.

[] **U.S. Mail Service:** mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on the 24th day of October, 2007 at San Francisco, California.

/s/ HALINA MARCINKOWSKI

Halina Marcinkowski

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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APPENDIX

DRA'S PROPOSED MODIFICATIONS TO THE ORDERING PARAGRAPHS OF D.07-09-020

7. On those dates, respectively, the basic rate freeze shall be lifted on all remaining basic residential lines, but subsequent increases in ILEC basic rates shall be phased in under a process to be determined in Phase II of this proceeding in order to bring basic rate caps up to ~~the~~ a level to be determined in Phase II of this proceeding until full pricing flexibility takes effect ~~of the revised benchmark threshold of \$36 per line.~~

9. As a basis to receive B-Fund support after full pricing flexibility takes effect, however, a COLR must certify annually that it is not charging rates for basic service in excess of a level to be determined in Phase II of this proceeding ~~the benchmark levels that we establish herein~~. A COLR that does not make the required annual certification must provide detailed a detailed showing as to why they are unable to comply with the Commission's Orders. The Commission will evaluate the evidence and determine what, if any, action is required.

13. The Commission shall undertake a second phase of this proceeding to resolve the remaining issues in this proceeding. Specifically, the second phase of the proceeding shall address the following issues:

- (a) Implement updated cost proxies utilizing the HM 5.3 Model for qualifying High Cost Census Block Groups for each of the COLRs,
- (b) Implement a process for the phase-in of increases in the caps on COLR basic rates until full pricing flexibility takes effect ~~to transition from the current levels up to the level of the adopted \$36 benchmark.~~
- (c) Implement a process whereby the COLR shall certify that its basic rates do not exceed a level to be determined in Phase II ~~the designated benchmark~~ as a basis to qualify for B-Fund support once full pricing flexibility takes effect;...

SERVICE LIST FOR R.06-06-028

kevin.saville@frontiercorp.com
astevens@czn.com
jesus.g.roman@verizon.com
esther.northrup@cox.com
cmailloux@turn.org
elaine.duncan@verizon.com
rcosta@turn.org
bnusbaum@turn.org
ndw@cpuc.ca.gov
david.discher@att.com
michael.foreman@att.com
peter.hayes@att.com
Stephen.h.Kukta@sprint.com
Thomas.selhorst@att.com
pcasciato@sbcglobal.net
jclark@gmsr.com
mtobias@mlawgroup.com
mschreiber@cwclaw.com
prosvall@cwclaw.com
suzannetoller@dwt.com
tregtremont@dwt.com
ens@loens.com
tlmurray@earthlink.net
douglas.garrett@cox.com

lmb@wblaw.net
ll@calcable.org
pucservice@dralegal.org
scratty@adelphia.net
cborn@czn.com
beth.fujimoto@cingular.com
cindy.manheim@cingular.com
PHILILLINI@aol.com
don.eachus@verizon.com
jacque.lopez@verizon.com
mshames@ucan.org
marcel@turn.org
rudy.reyes@verizon.com
Kristin.L.Jacobson@sprint.com
mtobias@mlawgroup.com
jwiedman@goodinmacbride.com
deyoung@caltel.org
mmattes@nossaman.com
katiensel@dwtdwt.com

mp@calcable.org
pucservice@dralegal.org
joe.chicoine@frontiercorp.com
mcf@calcomwebsite.com
dgw@cpuc.ca.gov
gtd@cpuc.ca.gov
mhm@cpuc.ca.gov
jjs@cpuc.ca.gov
kar@cpuc.ca.gov
lah@cpuc.ca.gov
ma1@cpuc.ca.gov
nxb@cpuc.ca.gov
ncl@cpuc.ca.gov
psp@cpuc.ca.gov
rkk@cpuc.ca.gov
rwc@cpuc.ca.gov
rwh@cpuc.ca.gov
trp@cpuc.ca.gov
randy.chinn@sen.ca.gov